(11)

No 852

IN THE

SUPREME COURT OF THE UNITED STATES

AMERICAN MANUFACTURING COMPANY
OF TEXAS
W. J. GOURLEY, and
W. H. THOMPSON *Petitioners*

vs.

NATIONAL LABOR RELATIONS BOARD
Respondent

PETITION FOR REVIEW ON WRIT OF CERTIORARI OF A DECISION OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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American Manufacturing Company of Texas, a corporation, W. J. Gourley and W. H. Thompson, hereby petition this Honorable Supreme Court of the United States to review on writ of certiorari a decision of the Honorable Circuit Court of Appeals for the Fifth Circuit at New Orleans, and would show:

1.

STATEMENT OF THE MATTER INVOLVED

In an opinion filed January 13th, 1943, and by decree entered February 15th, 1943, the Circuit Court of Appeals for the Fifth Circuit, holding that these petitioners had disobeyed its decree entered on December 9th, 1938, adjudged petitioners guilty of con-

tempt. This contempt proceeding had been initiated by a Petition For a Rule to Show Cause filed by the National Labor Relations Board in November, 1942; and such Rule to Show Cause had issued requiring American Manufacturing Company of Texas, W. J. Gourley and W. H. Thompson to answer by admission, denial, or affirmative defense every allegation of the Labor Board's Petition. These proceedings being for Civil contempt, your petitioners herein, did, in conformance with the Rule issued, file an answer to the charge of the Labor Board. This matter was considered by the Circuit Court upon the petition for the Rule, and the verified answer thereto, without the hearing of any additional evidence. Thereby the allegations of the Petition for Rule which were admitted by the answer (and only the allegations which were admitted) together with the affirmative allegations of the answer became the record of fact and evidence in the case.

It appeared from these facts, as so established and fixed by the pleadings:

> That in 1937 and 1938 American Manufacturing Company of Texas (a petitioner herein) being then engaged in the manufacture of oil field equipment on a small scale, employing about 250 men, had a Labor Board controversy which was terminated by the entering of a consent decree on December 9th, 1938, in cause No. 8964 entitled National Labor Relations Board v. American Manufacturing Company, Inc. in the Circuit Court of Appeals for the Fifth Circuit. (Tr. 24-25.)

That the sole and only Labor Act violations at issue in such labor case were—First, that American Manufacturing Company had assisted and dominated a company union known as Employees' Federation of American Manufacturing Company, and, Second, that an employee named Gutoski had been discriminated against and fired. (Tr. 24, 37-44.)

That the intermediate report of the Trial Examiner, the order of the National Labor Relations Board and the Circuit Court enforcing Decree (dated December 9th, 1938) dealt specifically and affirmatively with these two violations. (Tr. 37-44.)

That the Decree of December 9th, 1938, in addition to its requirements (by cease and and desist orders and by affirmative injunctions) with reference to the Employees' Federation and with reference to Gutoski matter, included a general cease and desist order embodying the content of Section 8 (1) of the Wagner Act: and it is this latter general cease and desist order only which is alleged to have been violated in this contempt action. (Tr. 4, 10-13.)

That American immediately complied with all requirements of the Decree of December 9th, 1938, reinstating Gutoski, refusing to recognize Employees' Federation, and posting the notices required. (Tr. 26.)

That no improper labor actions were charged

to American from December 9th, 1938, until June, 1942.

That in the interim American converted its plant from peace time private industry to war time industry, and in June of 1942 and for several months theretofore, American was engaged almost 100% in the manufacture of shells for the Army and Navy. (Tr. 25.)

That its volume of purchases and business was 1200% greater in June, 1942, than in 1938. (Tr. 25.)

That in June, 1942, the plant was operating under war time regulations, being fenced and guarded night and day, and with every precaution being taken to insure secrecy as to its endeavors, and to insure maximum efficiency of its working personnel. (Tr. 25.)

That in June, 1942, and for many months theretofore American had a constant demand for employees, particularly skilled machinists, and was employing any and every capable man it could locate, regardless of union affiliations and beliefs. (Tr. 26.)

That in June, 1942, it was employing members of the Union in responsible positions, and its plant was operating efficiently and without any labor difficulties. (Tr. 27.)

That it had not in June, 1942, or at any time before or after, discriminated against or threatened to discriminate against any employee because of his union affiliations or views. (Tr. 30.)

That American's foremen and men in charge of its operations had not discriminated against any employee by threat of intimidation or otherwise because of any union affiliations or beliefs. (Tr. 34-36, 45-46.)

That in June, 1942, American posted or issued three notices urging its employees to stay on the job and advising that they did not have to pay money to any organization as a pre-requisite to working for American. (Tr. 3, 4, 5, 15.)

That these notices were not connected with, related to, or in any manner similar to any of the acts and practices involved in the 1938 Labor case. (The Labor Board Petition does not even allege relationship or similarity. (Tr. 1-7.))

That neither said notices nor any of the surrounding conditions and circumstances at American carried any threat to the employees that they would be penalized or discriminated against because of union beliefs and affiliations. (Tr. 30.)

That under prevailing conditions as to the demands for labor, it was impossible for any employee to have been intimidated or to have been in any way interfered with, restrained or coerced with reference to his right to self-organize, etc. (Tr. 30.)

Although the above facts were undisputed in the record, the Circuit Court held that the June notices were contempuous without regard to whether the same were connected with, related to or were similar to the